IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1154 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURENDRANAGAR DISTRICT PANCHAYAT

Versus

DAHYABHAI AMARSINH

Appearance:

MR HS MUNSHAW for Petitioner No. 1

MRS DT SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 27/12/2001

ORAL JUDGEMENT

By way of this petition under Articles 226 and 227 of the Constitution, the petitioner - employer has challenged the award of the Labour Court, Surendranagar in Reference LCS No.273 of 1992 whereby the respondent - workman is ordered to be reinstated with 20% backwages from the date of reference of the dispute.

2. The impugned award is challenged mainly on the grounds that the industrial dispute of the respondent was referred after 7 years of the alleged date of termination, that no explanation for the delay was tendered, that in fact, the respondent had abandoned the service and that there was no question of violation of the provisions of Section 25-F of the I.D. Act in absence of the evidence of continuous service of one year. The learned counsel Mr.Munshaw relied upon the dates of termination of service and the reference of the industrial dispute, and the statement at Exh.10 which indicated the presence of the respondent for only 140 days in the year 1982 and 64 days in the year 1983. It must be noted in this context that an officer of the level of Dy. Executive Engineer was examined in evidence on behalf of the petitioner and, even after being given an opportunity to verify the record, he had not verified the record which could have indicated the violation of Section 25-H of the I.D. Act. As against the deposition of the respondent in proof of continuous service of 10 years, the petitioner had not produced any of the relevant documents like muster-roll, pay registers and seniority list, despite a specific demand therefor. On the other hand, it was admitted on behalf of the petitioner that the work on which the respondent was employed had continued and fresh recruitments were made.

3. Thus, after an elaborate exercise of appreciation of evidence on record, the finding of fact to the effect that the service of the respondent was terminated by the petitioner is recorded in the impugned award; negativing the contention that the respondent had abandoned the job. Thus, on the aforesaid finding of fact and on the ground that admittedly the work on which the respondent was employed had continued and new employees were employed without the respondent being called, the respondent was held to be entitled to reinstatement. As regards backwages, in view of the admitted alternative employment and the period of 7 years that had elapsed before the dispute was referred, the respondent is awarded only 20% backwages from the date of reference i.e. 20th September, 1992.

4. The factum of delay in making of the reference was sought to be canvassed as the most important aspect which disentitled the respondent from getting any relief and it was also cited as most important evidence of the respondent having abandoned his service. The petitioner has admittedly not challenged the legality and validity of the order of reference itself. Once an industrial

dispute is referred, the Labour Court cannot throw away the dispute only on the ground of delay in making of the reference, but it can mould the relief adjusting the equity between the parties which the Labour Court has done following the ratio of the judgement of the Supreme Court in AJAIB SINGH Vs. THE SIRHIND CO-OPERATIVE MARKETING-CUM-PROCESSING SERVICE SOCIETY LTD., reported in AIR 1999 SC 1351. Secondly, it was for the appropriate government to decide as to whether the industrial dispute subsisted requiring its reference. That issue did not arise before the Labour Court and the respondent could not be expected to lead evidence to explain the delay when such issue was not raised. On the other hand, there is no reason to disturb the finding of fact that it was the petitioner who had terminated the service of the respondent. There also is sufficient evidence and material suggesting that the provisions of Section 25H of the I.D. Act were violated by the petitioner in so far as the respondent was never called upon to report for duty even as the work under the petitioner admittedly continued in the year 1990 and thereafter.

5. Therefore, after closely examining the impugned award, no jurisdictional or other error, much less any error apparent on the face of the record was found. The learned counsel relied upon the judgment of the Supreme Court in INDIAN IRON & STEEL CO. LTD. vs. PRAHLAD SINGH reported in 2001 (1) SCC 424, the ratio of which does not apply as relief in that case was refused on the additional ground of the workman having lost lien on his post, whereas, in the facts of the present case the grievance of violation of Section 25-H of the I.D. Act was established.

The petition is, therefore, dismissed and Rule is discharged with no order as to costs.

(D.H.Waghela, J)
'Bhavesh'